No. 73-1373

APR 26

MICHAEL RODAK

In the Supreme Court of the United States

OCTOBER TERM, 1973

FRANCIS H. SHEPARD, JR., AND
MARGARET R. SHEPARD, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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We invite the Court's attention to the following facts which demonstrate that the petition for a writ of certiorari was filed out of time. The judgment of the court of appeals was entered on August 21, 1973 (Pet. App. 6a) and petitioners' untimely petition for rehearing was denied on December 4, 1973. The time for filing a petition for a writ of certiorari was not extended,[1] and accordingly, the 90-day period provided by 28 U.S.C. 2101(c) for petitioning in civil cases

[1]Petitioners' application, filed on December 12, 1973, for a 60-day extension in which to file their petition for a writ of certiorari was returned by the Clerk of this Court without action on December 17, 1973, because it was out of time under Rule 34(2) of the Rules of this Court.

expired on November 19, 1973. The petition was filed on March 6, 1974.

Since the time limit specified by 28 U.S.C. 2101(c) is jurisdictional, the petition should be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

APRIL 1974.

DOJ-1974-04